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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

MOHSEN LOGHMANI, Plaintiff and Appellant, v. TESSIE CLEVELAND COMMUNITY SERVICES CORPORATION et al., Defendants and Respondents.	B266999 (Los Angeles County Super. Ct. No. BC581625)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael Johnson, Judge. Affirmed.

Mohsen Loghmani, in pro. per., for Plaintiff and Appellant.

J.J. Little & Associates, James J. Little and Michael Thompson for Defendants and Respondents.

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Plaintiff Mohsen Loghmani filed this case in response to an adverse judgment we recently affirmed in a case under the Uniform Voidable Transfers Act (Civ. Code, § 3439 et seq.; UVTA) brought against him by Tessie Cleveland Community Services Corporation (Tessie) (*Tessie Cleveland Community Services Corp. v. Loghmani* (Nov. 28, 2016, B263845) [nonpub. opn.] (the underlying case)). As defendants, he named Tessie, three of Tessie's employees, Tessie's attorneys and law firm, and Tessie's two expert witnesses (collectively defendants). He alleged various claims, all of which were based on a purported conspiracy to manufacture false evidence and testimony in the underlying case. The trial court granted defendants' anti-SLAPP[1] motion to strike the complaint (Code Civ. Proc., § 425.16),[2] finding Loghmani's claims were based on protected activity and Loghmani failed to show a probability of prevailing on the merits, both because his claims lacked evidentiary support and because his claims were barred by the litigation privilege (Civ. Code, § 47, subd. (b)(2)). We affirm.

BACKGROUND[3]

We set forth the pertinent facts in our recent opinion affirming the judgment in the underlying case. In short, Tessie is a nonprofit, community-based mental health services center

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1 SLAPP stands for "strategic lawsuit against public participation."

2 Unless otherwise noted, undesignated statutory citations are to the Code of Civil Procedure.

3 We grant defendants' request for judicial notice of two documents from the underlying case—the trial court's minute order granting Tessie's motion for attorney fees and Loghmani's opening appellate brief.

serving children and families in Los Angeles County. In 2007, Tessie hired Mohsen, a licensed general contractor and engineer, to extensively remodel two of Tessie's facilities. Around the same time the parties signed an agreement for one of those facilities, Loghmani's wife purchased a property located on Laurel Canyon Boulevard in North Hollywood (the Laurel Canyon property). Shortly after, Loghmani executed a quitclaim deed of his interest in the property to his wife.

Believing Loghmani's work was defective and that he had received payment for work he had never performed, Tessie filed a civil case and obtained a judgment against him. Anticipating this judgment, Tessie filed the underlying case against Loghmani and his wife under the UVTA to set aside Loghmani's transfer of his interest in the Laurel Canyon property. Following a bench trial, the court entered judgment for Tessie on February 25, 2015, finding Loghmani and his wife had conspired to use Loghmani's assets to purchase the Laurel Canyon property and conceal that fact from creditors. The court set aside the transfer, ordered the clerk to issue a writ of attachment for the property, and declared the judgment a lien on the property. Loghmani appealed that decision on May 1, 2015.

On May 12, 2015, Loghmani filed this case against the following individuals and entities involved in the underlying case: Tessie; Tessie's CEO Moses Chadwick; Tessie's chief financial officer Carolyn Chadwick; Tessie board member Davis Nucum; Tessie's attorneys James Little and Michael Thompson and their firm J.J. Little and Associates; Tessie's expert appraisal witness Ben Tunnel and his corporation; and Tessie's expert witness on specialized debt collection Jan

Tucker. He asserted claims for intentional misrepresentation; negligent misrepresentation; fraudulent concealment; abuse of process; civil conspiracy; intentional infliction of emotional distress; and declaratory claims related to alter ego liability. As factual support for these claims, he essentially repeated his claims of error he asserted on appeal from the judgment in the underlying case, albeit now claiming defendants "agreed and knowingly and willfully conspired among themselves for a major scheme against Loghmani by fabricating phony evidences and to offer phony expert witnesses and having them provide fraudulent perjuriously sworn testimonies at trial to deceit the Court and defraud Loghmani." (*Sic*.) In short, he alleged (1) defendants conspired to have Tessie's experts Tucker and Tunnel testify falsely; (2) defendants conspired to fraudulently withdraw forensic accountant expert Richard McGuire as a witness for trial and replace his testimony with Tucker's testimony, even though Tucker was allegedly not qualified; (3) defendants withheld exhibits until the first day of trial; and (4) defendants filed false pleadings. Loghmani attached hundreds of pages of exhibits to the complaint, including subpoenas, filed documents, trial exhibits, and witness testimony from the underlying case.

Defendants moved to strike the complaint pursuant to the anti-SLAPP statute. The court granted the motion, finding the complaint was entirely based on protected litigation activity and Loghmani failed to show a probability of prevailing because he offered no supporting evidence in opposition to defendants' motion and his claims were barred by the litigation privilege (Civ. Code, § 47, subd. (b)). The court entered judgment and Loghmani appealed.

While the appeal in the current case was pending, we affirmed the judgment in the underlying case. In doing so, we essentially rejected the substance of the contentions Loghmani now alleges demonstrated a conspiracy to defraud him and the court. Specifically, we rejected Loghmani's arguments that Tessie improperly withdrew McGuire as an expert witness on forensic accounting; Tucker was not qualified to testify as an expert on Loghmani's financial transactions; and the trial court improperly denied a trial continuance because defendants withheld trial exhibits. We further held sufficient evidence supported the judgment. We also affirmed Tessie's attorney fees award. (*Tessie Cleveland Community Services Corp. v. Loghmani, supra*, B263845.)

DISCUSSION

Section 425.16 provides as relevant here, "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).) To resolve an anti-SLAPP motion, the trial court engages in a two-step process. " 'First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. . . . If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim.' " (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 733, citation omitted.) "In making these

determinations, the trial court considers 'the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.' (Code Civ. Proc., § 425.16, subd. (b)(2).)" (*Bergstein v. Stroock & Stroock & Lavan LLP* (2015) 236 Cal.App.4th 793, 803 (*Bergstein*).) We review de novo the trial court's ruling on an anti-SLAPP motion. (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2006) 136 Cal.App.4th 464, 472 (*Premier Medical*).)

Arising from Protected Activity

"The moving party has the initial burden of making a prima facie showing that one or more causes of action arise from protected activity." (*Bergstein, supra,* 236 Cal.App.4th at p. 803.) There is little doubt defendants carried that burden here.

"Statements made in litigation, or in connection with litigation, are protected by" the anti-SLAPP statute. (*Bergstein, supra*, 236 Cal.App.4th at p. 803; see *Rohde v. Wolf* (2007) 154 Cal.App.4th 28, 35 (*Rohde*) ["[S]tatements, writings and pleadings in connection with civil litigation are covered by the anti-SLAPP statute, and that statute does not require any showing that the litigated matter concerns a matter of public interest."]; see also *G.R. v. Intelligator* (2010) 185 Cal.App.4th 606, 612 [" '[A]ll communicative acts performed by attorneys as part of their representation of a client in a judicial proceeding or other petitioning context are per se protected as petitioning activity by the anti-SLAPP statute.' "].)

Here, Loghmani's complaint arose from defendants' protected litigation activity. Loghmani filed his complaint in response to the adverse judgment in the underlying case. He

named the defendants *because* they participated in the underlying case. The exhibits attached to the complaint all came from the underlying case. And the factual allegations are based entirely on a conspiracy to present allegedly false testimony and evidence during the course of the underlying case. Loghmani even admits in his opening brief that his "entire complaint and causes of action[] are based on the defendants' conspiracy conduct prior [to] and during the trial in the underlying proceedings." Even though Loghmani now claims defendants acted pursuant to a conspiracy, their alleged acts still trigger anti-SLAPP protection. (*Contreras v. Dowling* (Oct. 26, 2016, A142646) __ Cal.App.5th __, __ [2016 WL 6248437 at p. *10] (*Contreras*) ["Conclusory allegations of conspiracy or aiding and abetting do not deprive [a defendant's] actions of their protected status."].)

Loghmani argues his claims are exempt from the anti-SLAPP statute because defendants' actions were illegal as a matter of law, relying on *Flatley v. Mauro* (2006) 39 Cal.4th 299 (*Flatley*) and *Paul for Council v. Hanyecz* (2001) 85 Cal.App.4th 1356, disapproved on other grounds by *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, footnote 5. But the narrow *Flatley* exception only applies where "either the defendant concedes, or the evidence conclusively establishes, that the assertedly protected speech or petition activity was illegal as a matter of law." (*Flatley, supra,* at p. 320; see *Paul for Council, supra*, at p. 1367 [finding no anti-SLAPP protection in an undisputed "factual context in which defendants have effectively conceded the illegal nature of their election campaign finance activities" and the court concluded "as a matter of law, that such activities are *not* a

valid exercise of constitutional rights as contemplated by section 425.16"].)

Defendants vigorously dispute his factual allegations that they engaged in any conspiracy to defraud him or the court, and nothing in the complaint or supporting exhibits conclusively demonstrates a criminal violation as a matter of law. To the contrary, we rejected the substance of Loghmani's arguments in affirming the judgment in the underlying case, undermining any claim that defendants' alleged conspiracy based on the same conduct was illegal as a matter of law.

Moreover, we recently held the *Flatley* exception only applies to *criminal* conduct and only when the moving party expressly cites the statutory provision allegedly violated. (*Bergstein, supra,* 236 Cal.App.4th at p. 806.) Loghmani has not cited any criminal statute that might be applicable to defendants' alleged conspiracy.[4]

Probability of Prevailing

To show a probability of prevailing, a plaintiff " ' "must demonstrate that the *complaint is both legally sufficient* and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." ' " (*Premier Medical, supra,* 136 Cal.App.4th at p. 476.)

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[4] Citing *Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc.* (1986) 42 Cal.3d 1157, Loghmani argues he is merely using defendants' statements during the underlying case for "evidentiary purposes" in determining whether they acted with the "requisite intent." He plainly is not—all of his claims are squarely based on defendants' statements and conduct in the underlying case.

" 'A plaintiff cannot establish a probability of prevailing if the litigation privilege [in Civil Code section 47, subdivision (b)] precludes the defendant's liability on the claim.' " (*Bergstein, supra,* 236 Cal.App.4th at p. 814; see *Rohde, supra,* 154 Cal.App.4th at p. 38.) The litigation privilege applies to all torts except malicious prosecution. (*Flatley, supra*, 39 Cal.4th at p. 322.) It " 'precludes liability arising from a publication or broadcast made in a judicial proceeding or other official proceeding.' " (*Bergstein, supra*, at p. 814.) It applies to any communication " '(1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action.' " (*Ibid.*) The litigation privilege " 'is absolute and applies regardless of malice,' and ' "has been given broad application." ' " (*Ibid.*) " ' "Any doubt about whether the privilege applies is resolved in favor of applying it." ' " (*Contreras, supra*, __ Cal.App.5th at p. __ [2016 WL 6248437 at p. *11].)

For the same reasons Loghmani's allegations trigger anti-SLAPP protection, Loghmani's claims are all barred by the litigation privilege. They are based entirely on defendants' protected communications made during the underlying case in pursuit of a judgment in Tessie's favor. Again, it makes no difference that Loghmani couches his claims in terms of a conspiracy; the privilege still applies. (*McClatchy Newspapers, Inc. v. Superior Court* (1987) 189 Cal.App.3d 961, 971; *Steiner v. Eikerling* (1986) 181 Cal.App.3d 639, 643; *Pettitt v. Levy* (1972) 28 Cal.App.3d 484, 491.)

Attacks on Judgment and Fee Award in Underlying Case

Loghmani devotes half his opening brief to repeating nearly verbatim his arguments attacking the judgment and attorney fees award in the underlying case. He also levies personal attacks on Tessie's attorney James Little. We have addressed these matters in our opinion affirming the judgment in the underlying case and will not address them here.

DISPOSITION

The judgment is affirmed. Defendants are awarded costs on appeal.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.